Hooi Seong v Ooi Pay Yeong

HIGH COURT (PENANG) — CIVIL APPEAL NO 12–89–93
VINCENT NG J
26 AUGUST 1995

Damages (Personal Injury or Death) *— Fatal accident — Bereavement — Whether deceased proved to be a minor and had never married — Whether a minor can be presumed as never been married by virtue of s 10 of the Law Reform (Marriage and Divorce) Act 1976*

The appellant claimed damages for bereavement under ss 7 and 7(3B) of the Civil Law Act 1956 as the specified beneficiary of the deceased, Hooi Teck Weng, who at the time of death was a minor. The sessions court judge held that the deceased was 40% negligent and the defendant 60% negligent but disallowed the claim for bereavement as it was never proven that the deceased was not married. The appellant appealed to the High Court contending that it was not necessary to prove that the deceased was not married since it could be presumed by virtue of s 10 of the Law Reform (Marriage and Divorce) Act 1976 that a minor had never been married.

Held, dismissing the appeal:

Before a claim for damages under s 7(3B) of the 1956 Act can be allowed, it must be proved that the deceased was a minor and that he was never married. Section 10 of the Law Reform (Marriage and Divorce) Act 1976 cannot assist as it also implies that, a male who is under 18 years of age and a female between 16 and 18 years of age could be married by a licence granted by the Chief Minister under s 21(2) of the same Act. In any event, s 10 only concerns marriages solemnized in Malaysia; it does not concern marriages solemnized overseas which may permit marriages between minors.

[Bahasa Malaysia summary

Perayu menuntut ganti rugi untuk kehilangan (bereavement) di bawah ss 7 dan 7(3B) Akta Undang-Undang Sivil 1956 sebagai benefisiari yang dinamakan kepada si mati, Hooi Teck Weng, yang pada masa kematian adalah seorang di bawah umur. Hakim mahkamah sesyen memutuskan bahawa si mati adalah 40% cuai dan defendan 60% cuai tetapi tidak membenarkan tuntutan untuk kehilangan kerana tidak pernah dibuktikan bahawa si mati belum berkahwin. Perayu merayu ke Mahkamah Tinggi menegaskan bahawa adalah tidak perlu untuk membuktikan si mati belum berkahwin kerana ianya boleh dibuat anggapan memandangkan kepada s 10 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 bahawa seorang di bawah umur tidak pernah berkahwin.

A **Diputuskan**, menolak rayuan:

Sebelum tuntutan untuk ganti rugi di bawah s 7(3B) Akta 1956 dapat dibenarkan, ianya mestilah dibuktikan bahawa si mati adalah seorang di bawah umur dan bahawa beliau belum pernah berkahwin. Seksyen 10 Akta Membaharui Undang-Undang B (Perkahwinan dan Perceraian) 1976 tidak boleh membantu kerana ia juga membayangkan bahawa seorang lelaki yang berumur di bawah 18 tahun dan seorang perempuan berumur di antara 16 dan 18 tahun boleh berkahwin dengan suatu lesen yang diberikan oleh Ketua Menteri di bawah s 21(2) Akta yang sama. Dalam apa keadaan pun, s 10 adalah berkenaan dengan perkahwinan yang C dilangsungkan di Malaysia; ia tidak berkaitan dengan perkahwinan yang dilangsungkan di luar negara yang mungkin membenarkan perkahwinan di antara orang-orang di bawah umur.]

Legislation referred to

D Civil Law Act 1956 ss 7, 7(3B)
Law Reform (Marriage and Divorce) Act 1976 ss 10, 21(2)

Baldev Bhar (*Baldev Bhar & Co*) for the appellant.
Khairuddin bin Alaudin (*Bala Mahesan & Khairuddin*) for the E respondent.

Vincent Ng J: This is an appeal against the whole of the decision of the sessions court judge dated 27 August 93 arising out of a claim under ss 7 and 7(3B) of the Civil Law Act 1956 ('the 1956 Act'). The appellant sues as the specified beneficiary of Hooi Teck Weng ('the F deceased), who at the time of the accident was 17 years old.

After hearing the case, the learned judge found the deceased to be 40% negligent and the defendant 60% negligent and disallowed the claim for bereavement as it was never proven that the deceased was not married.

G After hearing submissions from both learned counsel, I allowed part of the appeal in that I found the defendant 80% negligent but refused to allow the appeal on bereavement under s 7(3B). I now state my reasons for doing so.

Section 7(3B) the 1956 Act states:

H A claim for damages for bereavement shall only be for the benefit—

(a) of the spouse of the person deceased; and

(b) where the person deceased was a minor and never married, of his parents.

It is not disputed that the deceased was a minor at the time of the I accident.

Counsel for the respondent submitted that appellant must prove that the deceased was his child, that he was below the age of 18 years and also that he was never married.

Counsel for appellant submitted it was not necessary to prove that the deceased was not married because it could be presumed by virtue of s 10 of the Law Reform (Marriage and Divorce) Act 1976 that a minor of 17 years has never been married. Section 10 of the Act states:

> Any marriage purported to be solemnised in Malaysia shall be void if at the date of the marriage either party is under the age of eighteen years unless, for a female who has completed her sixteenth year, the solemnisation of such marriage was authorised by a licence granted by the Chief Minister under s 21(2).

I do not agree that this provision is of any assistance to the appellant, as it also implies that a male who is under 18 years of age and a female between 16 and 18 years old could be married by a licence granted 'by the Chief Minister under s 21(2)'. In any event, s 10 concerns only marriages solemnized in Malaysia and not marriages solemnized overseas which may permit marriages between minors. As it is my considered view that the word 'and' interposed between the words 'was a minor' and 'never married' in s 7(3B)(b) the 1956 Act would entail the same to be read disjunctively to mean that before a claim for bereavement by the parents can be allowed, two ingredients would need to be proved namely, that the deceased is a minor and that he was never married, only upon being satisfied as to the marital status of the deceased can the trial court allow such a claim.

I therefore upheld the decision of the learned sessions court judge on this point and dismissed the appellant's appeal on the claim for bereavement.

Order accordingly.

Reported by Zahid Taib